

**From:** Morgan, Jeanette  
**Sent:** Tue 8/18/2015 3:12:24 PM  
**Subject:** FW: Water Law News for August 13, 2015



## Water Law News for August 13, 2015

**Bloomberg BNA Daily Environment Report™**

### *Climate Change*

#### Extreme Weather Puts World Food Production at Risk

The risk of global food production shocks and price spikes is rising due to increasingly intense storms and more frequent flood and drought events associated with warmer temperatures, U.S. and British researchers said Aug. 14....

### *Hydraulic Fracturing*

#### Fracking Ban Booted Off November Ballot in Ohio

Ohio's secretary of state has stripped three anti-fracking county charter initiatives from the November

ballot...

### *Oil Spills*

#### Council Releases Gulf Ecosystem Priorities List

A coalition of Gulf Coast governors and federal officials is proposing to use \$139.6 million of settlement money from the Deepwater Horizon explosion to fund restoration activities such as hydrologic restoration, land conservation, and...

### *Water Pollution*

#### California Company Accused of Illegal Toxic Discharges

A plastic products manufacturer is violating the Clean Water Act by releasing toxic chemicals into a stormwater system that discharges at San Francisco Bay, environmental advocates alleged in a complaint filed in a federal district court...

### *Water Pollution*

#### Days After Spill, Animas River Opens to Recreation

The Animas River has reopened for recreational use, with a health advisory from the Colorado Department of Public Health and Environment, following an accidental mining waste release eight days earlier by the Environmental Protection Agency....

### *Water Pollution*

#### EPA Proposes Phosphorus Limits for Lake Champlain

Cleanup plans for 12 segments of Lake Champlain are intended to reduce the amount of phosphorus pollution contaminating the water body, the Environmental Protection Agency said Aug. 14 in announcing the proposed limits. ...

### *Water Pollution*

#### No Formal Approval Needed for Anti-Degradation Methods

States and authorized tribes won't need approval from the Environmental Protection Agency for methods they use to protect water quality from being degraded through development or other activity that could lead to discharges of pollutants...

## *Water Pollution*

### **North Carolina Opposes Utility's Coal Ash Removal Plan**

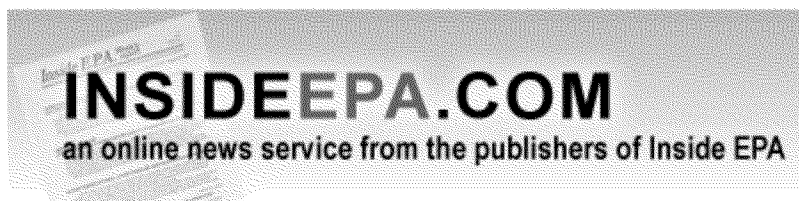
The North Carolina Department of the Environment and Natural Resources (DENR) has filed a motion in state court opposing Duke Energy's plan to clean up unlined coal ash pits at three electricity-generating plants (North Carolina v. Duke...

## **BNA INSIGHTS**

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### **Pipelines and Terrorism: Parlaying Your Company's Pipeline Security Program Into Legal Liability Protections**

Domestic terrorism poses unique legal challenges for pipeline owners and operators. Half a million miles of pipeline crisscross the country, transporting volatile, flammable, and toxic materials. While part of the country's critical...



## **Latest News**

### **EPA Water Policy Hints At Limits On Agency's 'Interpretative' Rulemaking**

EPA's recent proposed "interpretive" rule aiming to streamline tribes' applications to issue Clean Water Act (CWA) permits hints at the agency potentially seeing some limits on its authority to issue new interpretations of existing rules despite a Supreme Court ruling that says such policies do not need to have formal notice-and-comment.

### **EPA's Critics Might Wait Until 2017 To Advance Regulatory Reform Package**

EPA's critics in Congress are now considering waiting until 2017 for a concerted effort to pass a comprehensive regulatory reform package that a potential GOP president might sign, though they continue to push new bills that would allow legislators to end what they see as agency overreach with its climate, water, and other rules.



## YUCCA MOUNTAIN:

### Repository would have 'small' impact on groundwater -- NRC

Hannah Northey, E&E reporter

Published: Friday, August 14, 2015

*This story was updated at 2:05 p.m. EDT.*

The Nuclear Regulatory Commission has determined that storing spent reactor fuel in a waste repository under Yucca Mountain in Nevada would have minimal effects on the surrounding groundwater that ends up in Death Valley.

The finding marks yet another step toward a positive environmental review of the politically contentious project that has been stalled and lacks future funding.

In a draft supplement to an environmental impact statement for Yucca released yesterday, NRC staff found the estimated radiological doses from material that escapes into surrounding water would only trigger a "negligible" increase in the risk of cancer or severe hereditary effects in exposed individuals after the repository is closed.

The 173-page document shows NRC staff reviewed a wide range of possibilities, including a shifting climate, water withdrawal rates and how material would flow through surrounding rock in the Amargosa Desert over a period of 1 million years.

NRC staff looked at the transportation of both radioactive and nonradioactive materials, focusing on areas where water is pumped or naturally escapes. In one area called the Amargosa farms, farmers and residents pump extensive amounts of groundwater for irrigation and drinking water, according to the draft.

Overall, the effects of storing waste at the site 100 miles northwest of Las Vegas would be "small" after modeling the path of groundwater flow and the movement of radiological and nonradiological contaminants, according to the commission.

NRC asked the Department of Energy to prepare the supplement two years ago. That's because the commission in 2008 found DOE's work didn't adequately address all of the repository-related effects on groundwater or the effect of surface discharges on groundwater.

But a DOE official last year said the agency would instead update 2009 findings that groundwater in the area would be safe, noting that Yucca Mountain's desert environment in the rain shadow of the Sierra Nevada has not changed. That announcement put the burden on NRC (E&ENews PM, March 12).

The commission said it plans to issue a final groundwater study for Yucca Mountain early next year after taking public comment on the draft beginning Aug. 21, presumably when the language is published in the *Federal Register*. The agency is also planning on holding three public meetings -- two in Nevada and one at NRC headquarters in Rockville, Md. -- and a conference call in early October.

NRC's environmental review of the Yucca site is a critical step toward moving the project forward. The

agency in a series of safety reports has found that Yucca would meet appropriate safety standards after its closure (*E&ENews PM*, Oct. 16, 2014).

Sen. Lamar Alexander, the Republican chairman of a key Appropriations subcommittee from Tennessee, said in a statement that the draft gives more scientific proof the repository would be safe. "This scientific analysis is yet more evidence that to continue to oppose Yucca Mountain because of radiation concerns is to ignore science as well as the law," he said.

Yet despite what some observers say is growing interest in a Republican Congress to advance Yucca Mountain, the Obama administration and a majority of Nevada's delegation continue to fight the project.

## **SALMON:**

### **Fish die as Alaska bakes**

Published: Friday, August 14, 2015

Warming temperatures and low river levels are to blame for salmon die-offs in Alaska's Matanuska and Susitna valleys.

Hundreds of Arctic char recently stocked in Campbell Point Lake have died because of the phenomenon.

Mike Bethe of the Alaska Department of Fish and Game said the warm weather and low rivers create "almost a perfect storm" for salmon deaths but said the effects most likely will not endure.

"It will have some impact, but in the long term for species that return multiple age classes, I wouldn't characterize it as a disaster," he said.

This summer has been one of the warmest on record in much of south-central Alaska. Water temperatures in some areas have been recorded as high as 74 degrees Fahrenheit.

A lack of snow this winter also contributed to low water levels (Sean Doogan, *Alaska Dispatch News*, Aug. 13). -- **AW**

## **OCEANS:**

### **Downed plane parts add to debris fouling seas**

Published: Friday, August 14, 2015

The parts of Malaysia Airlines Flight 370 found this month on the island of Reunion near Africa were a small component of the million tons of debris being churned around by Earth's oceans.

Computer modeling had predicted that debris from the flight might end up near Reunion or Madagascar based on the pattern of ocean currents, which can carry debris ranging from Legos to fishing nets thousands of miles from their origin.

"The ocean is not a bathtub. It's in constant motion," said Erik van Sebille, an oceanographer with the Grantham Institute at Imperial College London who has spent years studying how currents carry debris. "At the surface, it's this giant, churning machine that moves things from A to B," he said. "And it's connecting all the areas of the globe."

No one is quite sure how much debris is actually out there, but it's assumed to be very large. According to a 2015 study, the world dumps 8.8 million tons of plastic into the world's oceans every year. The study, led by University of Georgia environmental engineering professor Jenna Jambeck, warned that in a decade, the plastic trash in the oceans could total 170 million tons. Five massive "garbage patches" have been identified, with one in the Pacific Ocean estimated to be the size of Texas.

Other debris includes flip-flops, buoys, building insulation and even a 164-foot ship washed out by the 2011 tsunami in Japan. But perhaps the most disturbing debris are the many human bodies seen floating in the oceans.

"I have seen many such bodies in my life," said Bangladeshi fisherman Mohammed Nasir, 53. "I often think how unlucky they are. They have left their families behind" (Tim Sullivan, [Associated Press](#), Aug. 14). -- BTP

## **FISHERIES:**

### **Trout hauled to cooler lakes as temperatures spike**

Published: Friday, August 14, 2015

Workers scooped up about 80,000 pounds of trout in California's Central Valley yesterday and hauled the fish 30 miles uphill to cooler water.

The state Department of Fish and Wildlife said temperatures in Millerton Lake, which flows through the hatchery on the San Joaquin River where the fish were, had reached nearly 70 degrees Fahrenheit.

"The drought is having a devastating effect," California Department of Fish and Wildlife spokesman Andrew Hughan said. "We're really making an effort to save as many fish as we can and get them into cold water before it gets any warmer."

The first round of trout was moved to nearby Shaver Lake, and an additional 50,000 pounds of trout will be brought to other lakes in Fresno and Madera counties ([Associated Press](#), Aug. 13). -- SP

## **TECHNOLOGY:**

### **Brewery funds water-saving innovations**

Published: Friday, August 14, 2015

St. Louis' Shock Top Brewing Co. is partnering with California water conservationists to fund a new water-saving technology each month of the next year.

"We are looking for low-cost to no-cost drought solutions and innovations to help deal with the drought problem," said Jake Kirsch, vice president of Shock Top, which is helming the program, called Shock the Drought, along with parent company Anheuser-Busch and crowdfunding giant Indiegogo.

The first innovation is a play on an old water-conservation technique -- placing a brick in the water tank of a toilet to displace the water level and create higher flush pressure with less water. "Drop-A-Brick 2.0" is a rubber version unveiled yesterday.

Right now, the bricks are hand-made in San Francisco, designer Ian Montgomery said. The \$100,000 in funding from Shock Top will be used to reduce manufacturing costs, he said. At this point, there has been no decision on how much the bricks will cost to the public, although thousands will be distributed free initially by nonprofits.

Each Drop-A-Brick saves about 50 gallons a week; placing them in 30,000 toilets will save enough water for nearly a half-million people to drink water for an entire year, Shock Top said.

Shock Top has two breweries in California and sells about 25 percent of its beer there, so the company felt compelled to fight the drought. Customers are also more conscious of the environmental impact of brands they patronize, especially large water users like breweries.

"Public awareness about the drought and the seriousness of it is high," Save Our Water spokeswoman Jennifer Persike said, "but sometimes the disconnect is 'What can I do to help?' This will help show people another step they can take to reduce water use" (Ronald D. White, Los Angeles Times, Aug. 13). --  
**BTP**

## **CALIFORNIA:**

### **Drought, heavy rain strained tree that fell on kids**

Published: Friday, August 14, 2015

An 85-foot pine tree that fell over and injured children in Pasadena, Calif., last month was under stress from the prolonged drought but gave way from a burst of heavy rain, an arborist hired by the city has found.

Arborist Ted Lubeshkoff found several contributing factors to the accident, such as a slight lean to the tree and an inadequate root system that was struggling in the drought.

Despite a 42-inch trunk and 60-foot canopy, Lubeshkoff found the tree's anchor roots were not wide-spreading.

The city highlighted the findings as proof it couldn't have predicted the tree falling over.

"While the tree was leaning, that didn't cause it to fall. The reasons why it fell weren't visible," spokesman William Boyer said (Richard Winton, Los Angeles Times, Aug. 13). -- **SP**

## **LAKE ERIE:**

### **USDA offers \$5M to help farmers curb pollution**

Tiffany Stecker, E&E reporter

Published: Friday, August 14, 2015

The Agriculture Department will set aside an additional \$5 million to help farmers implement water quality measures in the western Lake Erie basin as the region braces for the peak of algae bloom season.

USDA's Natural Resources Conservation Service will make funds available through the Environmental Quality Incentives Program (EQIP) for Ohio, Michigan and Indiana growers.

"A problem as complex as this one will demand wide attention, from agriculture to municipalities, and we will continue to work with the Western Lake Erie Basin Partnership and other partners across the region to find common ground to address water quality issues in the basin," Agriculture Secretary Tom Vilsack said in a statement.

Democratic senators from the Great Lakes region sent Vilsack a [letter](#) last month requesting additional funding through EQIP to prevent a massive algae bloom. The National Oceanic and Atmospheric Administration has said Lake Erie could face its worst algae bloom this summer since its record-breaking one in 2011 ([E&ENews PM](#), July 31).

Poor management of fertilizer and manure can lead to nutrient runoff into Lake Erie, where nitrogen and phosphorus help feed toxic and oxygen-robbing algae. The lake's shallow water, warmth and invasive zebra mussels also encourage algae blooms each summer.

NRCS has already invested about \$7.6 million this year to help western Lake Erie basin producers adopt conservation practices, according to the agency.

The money will help producers implement practices shown to reduce the flow of nitrogen and phosphorus into streams, like planting cover crops, adding gypsum to soil, reducing or eliminating tillage in fields and installing agricultural drainage water management systems. On average, farmers and ranchers contribute half the cost of implementing conservation practices.

The water utility in Toledo, Ohio, was forced to shut off its water supply over a weekend last August when microcystin algae overwhelmed the municipal system, turning the lakeside city into a poster child for agricultural runoff challenges in the Midwest ([Greenwire](#), Aug. 4, 2014).

## **EVERGLADES:**

### **Farmers cut phosphorous discharges -- but not enough**

Published: Friday, August 14, 2015

Farmers and water managers in South Florida celebrated reductions in phosphorous pollution this week even as the cuts are not enough to help the nearby Everglades.

Under Florida's 1994 Everglades Forever Act, farms abutting the Everglades were ordered to reduce their pollution levels. The law required farmers to cut phosphorus by at least 25 percent of pre-1994 levels. Last year's reductions reached 79 percent for the second time in 20 years.

At a South Florida Water Management District board meeting this week, members gave a standing ovation to the sugar cane farmers who they said helped cut pollution by 4,900 metric tons over the last 20 years.

"For two decades, these farmers not only met but consistently exceeded requirements," board member Melanie Peterson said.

Though phosphorus levels have been reduced, environmentalists say it is not enough to help the Everglades, which have been left even more vulnerable to pollution due to a severe drought.

Environmentalists say the reduction goals are not helpful because they focus on cutting the amount of pollution, versus the amount of phosphorous ending up in the Everglades.



"That's a huge improvement from where they were, but that's not in compliance," Earthjustice attorney David Guest said. "That's a little like saying we were driving 140 mph and now we're driving at 100. That's great, but more is possible, and more is necessary. They aren't taking responsibility" (Jenny Staletovich, *Miami Herald*, Aug. 13). -- **AW**

## **WATER POLLUTION:**

### **Mine spill reveals larger problems facing EPA**

Published: Friday, August 14, 2015

It will take many years and many millions of dollars to manage the toxic wastewater that spewed a 100-mile-long torrent of heavy metals into Western rivers, experts said, but hundreds of thousands of abandoned mines remain to be cleaned.

Since simply plugging Colorado's Gold King Mine could lead to an eventual explosion of poisonous water elsewhere, the safest solution would be to install a treatment plant that would indefinitely clean the water from Gold King and three other nearby mines. It would cost millions to build and operate and would do nothing to contain the thousands of other toxic streams that are a permanent legacy of mining nationwide.

"They have been not pursuing the obvious solution," said Rob Robinson, a retired abandoned mines cleanup coordinator for the Bureau of Land Management. "My hope is this has embarrassed the hell out of them and they're going to finally take it seriously."

A U.S. EPA crew accidentally caused the recent spill while working at Gold King.

There are about 500,000 abandoned mines nationwide, and EPA has estimated it will cost between \$20 billion and \$54 billion to clean them all.

Under the federal Clean Water Act, the mine owner is supposed to control discharges, but Gold King's landowner, Todd Hennis, is not considered legally responsible for the cleanup because the mine stopped operating in 1923, long before the modern era of environmental protection.

"A lot of these are mom-and-pops, they've inherited the property or they bought it years ago before the environmental laws were passed, and they just don't have the resources," said Doug Jamison with the hazardous materials division at Colorado's state health department.

In Colorado alone, there are hundreds, possibly thousands, of abandoned mines discharging acid rock drainage, Jamison said. The potent stew of heavy metals accumulates as chemical reactions brew up sulfuric acid at concentrations high enough to dissolve steel, as well as leach poisons down mountainsides and into groundwater decades after mines close (*AP/Colorado Springs Gazette*, Aug. 13).

Utah officials said yesterday that the plume had likely reached Lake Powell, although it has been diluted on the 300-mile journey to the reservoir and lost the bright yellow color seen closer to the spill site. Authorities said tests on Utah river water suggest the spill has dissipated enough that the water is safe to drink, and officials aren't expecting to see fish dying off at the lake (*Associated Press*, Aug. 13).

In Nevada, officials are stepping up their sampling of Lake Mead, though they stress that the pollution is unlikely to reach the reservoir anytime soon, and when it does, it will not be a danger.

"The dilution factor is extremely high," said Dave Johnson, general manager for engineering and

operations for the Southern Nevada Water Authority, noting that before it reaches the intake pipes that supply about 90 percent of the Las Vegas Valley's water, the roughly 9-acre-foot plume of pollution will mix with more than 13 million acre-feet of water in Lake Powell and another almost 10 million acre-feet of water in Lake Mead.

"We completely expect this to be a nonissue for us," he said (Henry Brean, [\*Las Vegas Review-Journal\*](#), Aug. 13). -- BTP

## LOUISIANA:

### Villages sink as sea eats away at land

Published: Friday, August 14, 2015

In the decade since Hurricane Katrina, many of Louisiana's small towns and villages are facing extinction as the state loses an average of 17 square miles per year to the sea.

"We're losing the cultural fabric of south Louisiana," said Jessica Schexnayder, a researcher with the Louisiana State University Sea Grant program. "It's not just whether the land will disappear, it's about when it's going to be gone."

More than 1,800 square miles of Louisiana land has turned into open water in the past century, taking barrier island chains, cemeteries, lighthouses, bridges, roads, schools, old forts and entire towns.

Though New Orleans is fortified behind a \$14.5 billion flood protection system, efforts to protect the rest of the state's land have faltered, and the land disappearing could put the Crescent City at risk in the future.

Loss has been a dominant theme for the past 50 years, since Hurricane Betsy clobbered New Orleans on Sept. 9, 1965, flooding many of the same places Katrina did 40 years later.

Over this period, scientists say a series of factors -- most of them man-made -- have caused the rapid loss of wetlands: sea-level rise, the natural sinking of the delta, ongoing damage from oil drilling and repeated hurricane damage.

On top of that is clear-cut logging that wiped out the state's abundant swamp forests at the end of the 1800s, oyster dredging that ruined a deltawide reef world, the spaghetti-like network of gas pipelines and wetlands loss due to urban development.

Katrina had a storm surge of 28 feet and waves that reached 55 feet, according to the Army Corps of Engineers. In New Orleans, the surge reached about 16 feet.

Scientists say Katrina was especially destructive because of the disappearance of buffer land between New Orleans and the Gulf.

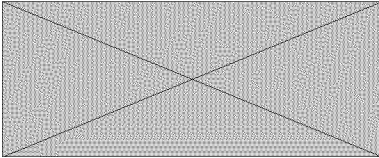
A hurricane that landed a century ago, on Sept. 29, 1915, was blunted by barrier islands, cypress forests, natural ridges and marshes that once extended in front of New Orleans. The storm -- one of the worst to strike Louisiana -- killed about 275 people as it flattened coastal towns. But New Orleans didn't flood.

The same storm today would push dangerously high storm surge right up to New Orleans' doorstep, testing the city's new fortifications, experts say (Cain Burdeau, [\*AP/ABC News\*](#), Aug. 14). -- BTP



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## E&E's Power Plan Hub is updated



If you haven't checked it out, [E&E's updated Power Plan Hub](#) features revised state goal information, Clean Power Plan fact sheets and summaries of reactions from political leaders, state officials and industry interests. [Go to](#) E&E's Power Plan Hub.

**CLIMATEWIRE — Mon., August 17, 2015**

 [READ FULL EDITION](#)

### **1.RESEARCH:**

#### **Turning CO2 emissions into plastic with algae? It may not be as crazy as it sounds**

From polyester shirts, plastic milk jugs and PVC pipes to the production of high-grade industrial ethanol, the contribution of the chemical feedstock ethylene can be found just about everywhere around the globe. But ethylene's ubiquity masks an underlying environmental cost: The way it is produced emits more carbon dioxide than any other chemical process. Some scientists have been experimenting with ways to make ethylene production more green. At the Department of Energy's National Renewable Energy Laboratory, researchers are finding unexpected success with the help of cyanobacteria, or blue-green algae.

### **2.RELIGION:**

#### **Can an Islamic climate change declaration inspire 1.6B Muslims?**

Islamic leaders from around the globe tomorrow will unveil a declaration calling on the world's 1.6 billion Muslims to embrace climate change action as part of their religious duty.

TODAY'S STORIES

### **3.RESOURCES:**

#### **Upper Colorado River states try cash to conserve water**

### **4.REGULATION:**

#### **EPA proposes stricter landfill methane regulations**

### **5.EXTREME WEATHER:**

#### **An accelerating cycle of droughts may doom some species of butterflies -- study**

### **6.STATES:**

#### **Wash. Gov. Inslee pushes forward carbon cap**

### **7.ARCTIC:**

#### **Strong winds are driving erosion on the melting Greenland ice sheet -- study**

### **8.CALIFORNIA:**

#### **Fossil fuel investments responsible for losses of \$5B in public pension funds**

### **9.EXTREME WEATHER:**

#### **El Niño raises flooding concerns for Southern Calif.**

### **10.RESEARCH:**

#### **Global temperatures continue to spike, despite disagreement on the 'pause'**

### **11.FOSSIL FUELS:**

#### **Japan's environment minister objects to plans for a new coal-fired power plant**

E&E INTERACTIVE

### **12.CLEAN POWER PLAN:**

#### **States aim for conservative judges to hear challenge**



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**ENERGYWIRE — Mon., August 17, 2015**

 [READ FULL EDITION](#)

### 1.UTILITIES:

#### **Costly coal-gasification gamble hits testing phase as doubts persist**

DEKALB, Miss. — When it starts up, Kemper will be the first commercial scale carbon-capture project in the United States. But right now, it is a hissing maze of pipes like any large power plant. The pipes, some wrapped in insulation, wind through the multilevel structure, connecting to various other machines. This is the building that houses the gasifier for Mississippi Power Co.'s Kemper County energy facility, a power plant that will convert lignite coal to natural gas. The project is in the spotlight for its groundbreaking technology, as well as for scheduling delays and massive cost overruns.

### TOP STORIES

#### 2.OIL EXPORTS:

##### **White House OKs some shipments to Mexico**

#### 3.TRANSPORT:

##### **Combined risk of crude and nuclear alarms Minn. tribe**

#### 4.BAKKEN SHALE:

##### **N.D. hits near-record oil production as prices plummet**

### ELECTRICITY

#### 5.TEXAS:

##### **PUC commissioner puts parties 'on notice' over Oncor issues**

#### 6.PEOPLE:

##### **ERCOT gains new independent director**

#### 7.STORAGE:

##### **Bloom Energy's fuel cells blossom under Exelon plan**

### OIL AND GAS

#### 8.LAW:

##### **Ohio secretary of state tosses anti-fracking elections in 3 counties**

#### 9.UTICA SHALE:

##### **MLP launches gas pipeline project**

#### 10.ENERGY MARKETS:

##### **Oil's lackluster summer signals price slump isn't done**

#### 11.REFINERIES:

##### **Exxon Mobil asks to use older pollution controls as it increases production**

### E&E INTERACTIVE

#### 12.CLEAN POWER PLAN:

##### **States aim for conservative judges to hear challenge**

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